

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case Number 02-10149

Honorable David M. Lawson

MARION L. KINCAID TRUST and
MARION L. KINCAID, TRUSTEE,

Defendants.

**ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL RECONSIDERATION
AND AMENDING NOVEMBER 3, 2006 ORDER GRANTING IN PART DEFENDANTS'
MOTION FOR REVIEW OF CLERK'S ACTION DENYING COSTS**

On November 3, 2006, this Court issued an order allowing the defendants to recover certain costs from the plaintiff in the amount of \$150 as reimbursement for the filing fee they claimed to have paid in this action. The defendants had asserted to this Court that "Defendants' costs include: \$150 filing fee." Defs.' Mot. Review Clerk's Action at 2. On November 16, 2006, the plaintiff filed a motion stating that the defendants never, in fact, paid such a fee. The plaintiff further states that Attorney Martin, who represents the defendants, has refused to contact the clerk's office to confirm that no filing fee was paid. The Court's own discussion with the clerk's office revealed that parties are never charged fees to file a counter-complaint. It appears, therefore, that the defendants never incurred the cost for which they claim reimbursement.

Motions for reconsideration may be granted pursuant to E.D. Mich. LR 7.1(g)(1) when the moving party to shows (1) a "palpable defect," (2) that misled the court and the parties, and (3) that correcting the defect will result in a different disposition of the case. E.D. Mich. LR 7.1(g)(3). A "palpable defect" is a defect that is obvious, clear, unmistakable, manifest, or plain. *Mich. Dep't of Treasury v. Michalec*, 181 F. Supp. 2d 731, 734 (E.D. Mich. 2002) (citations omitted). The

defendants' misrepresentation to the Court concerning their incurred costs constitutes a palpable defect in its order of November 3, 2006 entitling the plaintiff to reconsideration of that order. The plaintiff's motion for partial reconsideration will be granted, and the Court's November 3, 2006 order will be amended to delete that portion allowing the defendants to recover the filing fee of \$150.

Accordingly, it is **ORDERED** that the plaintiff's motion for reconsideration [dkt # 97] is **GRANTED**.

It is further **ORDERED** that the Court's November 3, 2006 order [dkt # 96] is amended to the extent that it requires the plaintiff to reimburse the defendants for the \$150 filing fee, which they never paid.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: November 22, 2006

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on November 22, 2006.

s/Felicia M. Moses
FELICIA M. MOSES